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FISCAL IMPACT REPORT

ORIGINAL DATE 2/15/07
 LAST UPDATED 3/6/07 HB 1114/HCPACS

SPONSOR HCPAC

SHORT TITLE Additional Firearm Crimes & Penalties SB _____

ANALYST Peery-Galon

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

Administrative Office of the Courts (AOC)
 Department of Public Safety (DPS)
 New Mexico Sentencing Commission (NMSC)
 Public Defender Department (PDD)

No Responses Received From

Administrative Office of the District Attorneys (AODA)
 New Mexico Municipal League
 New Mexico Association of Counties

SUMMARY

Synopsis of Bill

The House Consumer and Public Affairs Committee Substitute for House Bill 1114 creates a new section of Chapter 10, Article 7 NMSA 1978. The new section states the unlawful carrying of an unregistered firearm consists of a person carrying any of the following loaded firearms anywhere if it is not lawfully registered to the person pursuant to the federal National Firearms act:

- A shotgun or a weapon made from a shotgun that has a barrel or barrels of less than eighteen inches in length;
- A rife or a weapon made from a rifle that has a barrel or barrels or less than sixteen inches in length;
- A weapon made from a shotgun or rifle if the weapon has an overall length of less than twenty-six inches;

- A machine gun; or
- A firearm silencer.

An individual who commits the unlawful carrying of an unregistered firearm is guilty of a fourth degree felony. A machine gun is defined as a weapon that shoots, is designed to shoot or is readily restored to shoot automatically more than one shot, without manual reloading, by a single function of the trigger. The substitute makes it a fourth degree felony to unlawfully alter a firearm's serial number and to commit the unlawful sale, possession or transportation of a firearm with an altered serial number.

FISCAL IMPLICATIONS

AOC states there will be minimal administrative cost for statewide update, distribution and documentation of statutory changes. AOC reports any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and appeals from convictions.

SIGNIFICANT ISSUES

NMSC states the proposed legislation would most likely be used in conjunction with cases where offenders have been arrested, charged and subsequently prosecuted for other, often more serious, crimes during which the handgun in question was used or discovered. Also, NMSC notes it is difficult to predict the frequency with which such handguns will be discovered, but is it likely that the offenses of altering a serial number would be stacked on to other charges related to the same criminal conduct or even.

PDD notes the substitute does not apply to a law enforcement officer who carries a firearm this is subject to the provisions of this section in the lawful discharge of the officer's duty. However, the substitute make no exception for military personnel deployed in New Mexico. PDD states it is unlikely any prosecutor would bring such a charge; however, a National Guardsman from another state on the border for security carrying an issued weapon would be a felon under the proposed law.

PDD notes that Section 30-7-1 NMSA 1978 defines "carrying a deadly weapon" to mean "being armed with a deadly weapon by having it on the person or in close proximity thereto, so that the weapon is readily accessible for use." PDD states since "carrying" is not defined in the substitute it might result in felony-level charges being brought against persons. PDD notes the Court of Appeals has stated that whether a weapon is readily accessible for use is a question of fact for a jury to decide based on the evidence presented. In *State v. Salazar*, the Court of Appeals held that a gun locked in a trunk could be found to be readily accessible for use, and supported a jury finding that it was being carried. PDD states under the substitute a person who drove a National Guardsman or law enforcement officer and his weapon within the state could be charged with a felony.

PDD states the substitute raises the question in whether a person carrying an unregistered silencer alone be violating the proposed legislation. A silencer cannot be loaded and the proposed legislation requires the firearm be loaded. PDD states a firearm silencer is not defined and is a term that would be subject to litigation.

PERFORMANCE IMPLICATIONS

AOC states the proposed legislation may have an impact on performance measures pertaining to cases disposed of as a percent of cases filed and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

AOC notes new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts requiring additional resources.

TECHNICAL ISSUES

On page 2, line 20, at the end of the sentence there appears to be an unnecessary quotation mark.

AMENDMENTS

PDD suggests an amendment to paragraph C to add language that the section does not apply to military personnel carrying arms as part of their duties.

PDD suggests an amendment to paragraph A as follows: “A. Unlawful carrying of an unregistered firearm consists of a person carrying any of the following loaded firearms anywhere if it is not lawfully registered to a person present pursuant to the federal National Firearms Act.”

PDD suggest an amendment to the substitute to add the following language: “E. As used in this section, “firearm silencer” means any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.”

RPG/nt